

U.S. Patent Application Serial No. **10/567,968**
Response filed November 15, 2010
Reply to OA dated August 13, 2010

REMARKS

Claims 1-16 are pending in this application, with claims 1-4 and 8-16 withdrawn from consideration. Claims 17-20 are newly added herein. Upon entry of this amendment, claims 1-4 and 8-20 will be pending, with claims 1-4 and 8-16 withdrawn from consideration. Entry of this amendment and reconsideration of the rejections are respectfully requested.

No new matter has been introduced by this Amendment. Support for the amendments to the claims is discussed below.

Newly submitted claim 16 directed to an invention that is independent or distinct from the invention originally claimed. Accordingly, claim 16 is withdrawn from consideration as being directed to a non-elected invention. (Office action paragraph nos. 3 & 4)

The Examiner has considered the product claims to have been constructively elected, and has withdrawn new claim 16. However, Applicant respectfully traverses the finding of constructive election.

Applicant notes that the issue of constructive election (MPEP 821.03) is an aspect of US restriction practice under 37 CFR 1.142, but that for 371 National Stage applications, PCT Unity of Invention rules 13.1 and 13.2 apply, without regard to the practice in national state applications filed under 35 U.S.C. 111 (see MPEP 1850).

The Examiner has not presented a proper argument for lack of unity of invention of claim 16 with claim 5 under PCT rules 13.1 and 13.2. Applicant submits that both claims 5 and 16 require

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a powder prepared by partial hydration of calcined dolomite, and if claim 5 is distinguished from the prior art, this represents a special technical feature shared by the claims.

Rejoinder of claim 16 is therefore respectfully requested.

Claims 5-7 are rejected under 35 U.S.C. §102(b) as being anticipated by Crowell (US 1,577,450; published 06/11/1923), evidenced by Felder-Casagrande et al. (J. Thermal Analysis, 1997, 47, 971-978). (Office action paragraph no. 9)

The rejection of claims 5-7 is respectfully traversed and reconsideration is requested.

In the Amendment of June 4, 2010, Applicant had argued that neither Crowell nor Felder discloses “a powder prepared by partial hydration of calcined dolomite.” Applicant noted that the Examiner has apparently misinterpreted the chemical analysis of bentonite in Crowell, and that Felder is directed to calcination of limestone and dolomite, but does not disclose partially hydrated dolomite.

On page 3, lines 5-10, of the Office action, the Examiner discusses the Crowell reference, and the disclosure that mineral materials are “finely divided” in Crowell. The Examiner argues that this would be considered to be a mineral powder. Applicant respectfully submits that the relevance of this argument is unclear. Applicant did not argue that Crowell does not disclose a “powder.”

At page 3, lines 10 and ff., the Examiner acknowledges that Crowell discloses placing bentonite onto a fabric, but states that “bentonite is an aluminum phyllosilicate consisting mostly of

montmorillonite Accordingly, neither bentonite or monmorillonite comprise either lime or magnesia.” The Examiner goes on to say:

“It should also be noted that the instant claims are generically directed to the product of a reaction [e.g. calcination of dolomite]. The Examiner has had to rely on evidentiary reference to know what such a product comprises (see Felder). Felder shows that calcined dolomite produces lime and magnesia

The Examiner appears to be arguing that calcined dolomite inherently includes lime and magnesia, and that partially hydrated calcined dolomite would therefore inherently be the product of partial hydration of lime and magnesia. That is, the Examiner appears to be implying that the claim limitations are somehow “inherent” in the reference. However, Applicant respectfully submits that this argument is unclear, and the Examiner has not presented the required basis in fact and/or technical reasoning for an inherency argument.

Applicant again submits that Felder is directed to calcination (heating to induce decomposition) of limestone, and calcination of dolomite is disclosed. However, Felder does not disclose any “powder prepared by partial hydration of dolomite.”

Felder states that cement production and calcinations of limestone and the like cause non-neglectable environmental problems within the global carbon cycle. However, there is no disclosure of an antiviral agent in Felder.

Crowell relates in particular to coated cloth and paper and to silicate coating compositions in which a considerable proportion of highly hygroscopic bentonite (not dolomite) clay (contains CaO, MgO) or the like is combined or incorporated so as to minimize or prevent cracking or flaking

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when at least relatively thin films or coatings are used. However, the reference does not relate to antiviral agents at all, and there is no suggestion for a form of an antiviral fabric.

Claims 5-7 are therefore not obvious over the cited references.

Regarding new claims 17-20.

New claims 17-20 are all dependent from claim 5. Support for the limitations of claims 17-20 may be found, for example, in the specification in the First Embodiment, on pages 6-7.


If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact the applicants' undersigned agent at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

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In the event that this paper is not timely filed, the applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,

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